U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7143418

Date: FEB. 25, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a healthcare and life sciences management specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as an intern with [redacted], a firm that advises life science companies seeking to enter the U.S. market.[5] Since January 2019, the Petitioner has been working as a market research manager at [redacted], a company specializing in [redacted] laboratory services for the pharmaceutical, medical device, and biotechnology industries.[6]

Regarding the Petitioner's claim of eligibility under *Dhanasar*'s first prong, he stated that his proposed endeavor involves "innovation at the intersection of healthcare, business and technology." He asserted that he intends "to solve problems and create value for stakeholders with the healthcare and life sciences industries, either in an entrepreneurial or an intrapreneurial capacity." The Petitioner further explained that his proposed undertaking includes helping life sciences companies commercialize their inventions and innovations, assisting life sciences companies from around the world in bringing innovative technologies to the U.S. market, transferring technology through working with scientists and life science entrepreneurs to commercialize their ideas and inventions, consulting companies in the healthcare and life science industries, and commercializing scientific discoveries and fostering healthcare innovations.

The record includes articles discussing a lack of appropriate skills mixing in and across enterprises as a barrier to innovation, the role of technological innovation and entrepreneurship in long-term economic development, the increase in U.S. workers employed by foreign-owned companies, and international bioscience companies' expansion of operations into the United States. In addition, the Petitioner submitted information about [redacted] cancer, [redacted]'s products and services, the role of entrepreneurs in driving global economic growth, the lack of an understanding of translational science as an obstacle to drug development, and the necessity for innovation in the healthcare industry. The record therefore supports the Director's determination that the Petitioner's endeavor has substantial merit.

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Petitioner received both a Master of Business Administration degree in Health Sector Management and a Master of Science degree in Information Systems from [redacted] (May 2017).

[5] The Petitioner provided a letter from the president of [redacted] stating that his "internship . . . is sponsored by [redacted] Massachusetts."

[6] The record includes a December 2018 letter from the senior director of corporate human resources at [redacted] offering the Petitioner "the position of Market Research Manager." As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

In denying the petition, the Director determined that the Petitioner had not shown that the impact of his proposed endeavor rises to the level of national importance because it would "be limited to his employer(s) and their clients, or to his clients." The Director concluded that the Petitioner's proposed undertaking was "not shown to impact the Petitioner's listed fields more broadly." For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

On appeal, the Petitioner argues that his proposed endeavor "is not intended to be limited to my employer nor [its] clients." He maintains that "the work I do within or for an organization, though beneficial to the company, does not annul the benefit it has to the country and the people in the country." The Petitioner contends that his proposed endeavor supports "the development of products that would be used to improve treatment of patients with cancer," "commercialization of research from academic institutions for use in industry," "small-sized biotechnology companies developing therapies to solve unmet medical needs," and "product and service delivery of business unit leaders offering drug research and development services."[7] In addition, he asserts that the benefits of his proposed work extend beyond his clients, institutions, and companies, and also affects major stakeholders such as "patients, physicians, employers, insurance companies, pharmaceutical firms, and government."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable healthcare management and consulting services for his employer, its clients, and their stakeholders, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.[8] In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and its clientele and stakeholders to impact his field or the U.S. healthcare industry more broadly at a level commensurate with national importance.

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[7] In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The record, however, does not include evidence of the Petitioner's upcoming projects in the United States, or other information about the specific entrepreneurial work or product development services the Petitioner plans to undertake in this country.

[8] The issue here is not the broader implications of the Petitioner's employers or clients' product development work or the commercialization of their medical research, but rather whether his specific proposed work for those organizations has implications at a level sufficient to establish the national importance of his endeavor.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.